IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

XOBJC-43-CII of 2015 (O&M) in/and
FAO No.9517 of 2014 (O&M)
Date of decision: 07.05.2018

National Insurance Company Ltd.

.......Appellant

versus

Smt. Sunita Rani alias Savita and others

......Respondents

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: - Mr. A.S. Sidhu, Advocate,
for the appellant.

Mr. Rishi Nijhawan, Advocate,
for respondents No.1 and 2.

RAMENDRA JAIN, J. (ORAL)

CM-26390-CII of 2014

For the reasons mentioned in the application, same is allowed. Delay of one day in filing the accompanying appeal is condoned.

FAO-9517 of 2014

Through this judgment, I shall dispose of above titled appeal filed by the Insurance Company for reduction of compensation amount granted to respondents No.1 and 2-claimants and cross-objections filed by respondents No.1 and 2 for enhancements of compensation amount, by modifying impugned award dated 19.08.2014 passed by the Motor Accident Claims Tribunal, Kaithal (hereinafter referred to as the 'Tribunal').

Put pithily, in the evening of 23.05.2012, Deepika aged 21 years, a student of B.Tech. Computer Engineering (final year) having diploma in computer from NIIT, Delhi, while travelling in a three-wheeler along with her co-students died in a motor vehicular accident being caused by offending jeep No.HR-22G-2384 driven by respondent No.3, owned by respondent No.4 and insured with appellant-Insurance Company. Parents of the deceased filed a claim petition for grant of compensation against the death of their unmarried daughter.

After holding trial, the Tribunal granted a sum of ₹22,35,000/- to respondents No.1 and 2-claimants-cross-objectors vide impugned award dated 19.08.2014 along with interest @ 9% per annum from the date of institution of the claim petition till realisation.

Learned counsel for the appellant-Insurance Company contends that the Tribunal, though has observed for adding 50% to the alleged notional income of the deceased towards future prospects, but while calculating the compensation, due to oversight, erroneously added 100% under the said head. Relying upon the judgment of the Hon'ble Supreme Court in ***Hem Raj v. The Oriental Insurance Company Limited and others****, 2018(2) PLR 480*, he contends that the Tribunal ought to have taken income of the deceased equivalent to minimum wages prevalent and prescribed at the relevant time. The accident took place in the year 2012. As per circular, minimum wages for a skilled workman in the year 2012 were ₹5487.29. The Tribunal ought to have awarded compensation to the claimants while taking the said income of the deceased and not by taking the income of the deceased at ₹10,000/- per month, without any income proof.

On the other hand, learned counsel for respondents No.1 and 2-cross-objectors, vehemently opposing the above arguments of learned counsel for the appellant-Insurance Company, submits that compensation in the instant case has to be re-calculated on the basis of ratio laid down by the Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others****, 2017(4) R.C.R.(Civil) 1009.*

Having given considerable thought to the submissions made by both the sides, this Court finds that the amount of compensation awarded by the Tribunal has to be re-calculated by considering the notional income of the deceased at ₹8,000/- per month on the basis of guess work in the absence of any income proof.

Admittedly, deceased was a student of B.Tech Computer Engineering (final year). Deceased must have become a qualified engineer after few months or within a year. Therefore, her income according to ***Hem Raj's*** case (supra) cannot be taken as that of a workman in the absence of any income proof inasmuch as a casual workman can be an illiterate having no special skills in a particular field. By length of experience, he may be more capable and efficient, but in any circumstances, cannot be equated with a qualified person. Moreover, peculiar facts of the instant case are altogether different from the facts of the above referred authority, from which it is not clear as to whether the deceased possessed any qualification.

In view of above factual aspect, notional income of the deceased is considered as ₹8,000/- per month and not ₹10,000/-, taken by the Tribunal in the absence of any income proof. Since deceased was unmarried, therefore, 50% has to be deducted as per settled proposition of law followed since last many decades towards her personal expenses. On deduction of the same, the amount comes to Rs.4,000/- per month i.e. Rs.48,000/- per annum. As per ***Pranay Sethi's*** case (supra) 40% has to be added to the above monthly income of the deceased towards future prospects. By adding the same, amount comes to ₹67,200/-. Undisputedly, deceased Deepika was 21 years of age, therefore, multiplier of 18 has to be applied to the aforesaid amount. By adding the same, the amount comes to ₹12,09,600/-. That apart, a sum of ₹30,000/- has to be added towards loss of estate and funeral expenses. The total amount comes to ₹12,39,600/-.

Claimant-cross-objectors have produced medical bills of the deceased for ₹50,000/-. The Tribunal has granted ₹25,000/- towards medical expenses of the deceased. Therefore, ₹25,000/- is further added to the aforesaid amount of compensation, to which both the sides have no objection. Therefore, by adding the same, the amount comes to ₹12,64,600/-. Both the sides are also agreed to add further ₹25,000/- towards transportation expenses. By adding the same, the total amount comes to ₹12,89,600/-. Therefore, respondents No.1 and 2-claimants are held entitled to compensation amount of Rs.12,89,600/- along with interest @ 9% per annum from the date of institution of the claim petition till realisation.

Accordingly, appeal of the Insurance Company is partly allowed. Cross-objections of respondents No.1 and 2-Claimants are dismissed.

It has been pointed out that the appellant-Insurance Company has already deposited ₹15,00,000/- with the Tribunal, which has been disbursed to the claimants. Therefore, the Tribunal is directed to proceed further in the matter to get the excess amount of ₹2,10,400/- refunded to the Insurance Company. However, in case, amount of compensation, after adding interest at the above rate of interest comes more than ₹15,00,000/-, then the Insurance Company would deposit the same within two months from today, otherwise, respondents No.1 and 2-claimants would refund the excess amount within the same period which has been granted to the Insurance Company.

(Ramendra Jain)
Judge

May 07, 2018
R.S.

Whether speaking/reasoned Yes/No

Whether reportable Yes/No